

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

3. The Complainant, by delegation from the Administrator of EPA to the Regional Administrator, EPA Region VII, is the Director of Region VII's Water, Wetlands, and Pesticides Division.

4. Respondent, Innsbrook Corporation ("Innsbrook"), is a construction, development and resort company, incorporated in the State of Missouri with offices located at 1 Aspen Circle Dr., Wright City, Missouri 63390.

Statutory and Regulatory Background

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, inter alia, Section 404 of the CWA, 33 U.S.C. § 1344. Section 404 of the CWA provides that pollutants may be discharged only in accordance with the terms of a permit for the discharge of dredged or fill material.

6. The CWA prohibits the discharge of "pollutants" from a "point source" into a "navigable water" of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

Factual Background

7. At various times between May and September, 1998, Respondent and/or persons acting on its behalf, discharged dredged or fill material including dirt, spoil, rock and sand, into an unnamed tributary of the North Fork of Charrette Creek in Warren County, Missouri. The unnamed tributary flows into Charrette Creek and on into the Missouri River. The discharges were part of the construction of a dam by Respondent to create the 20 acre Konstantz Lake, as part of Respondent's development of a residential community. Respondent's discharges of fill in the construction of the dam, and the subsequent inundation of the tributary by Konstantz Lake impacted approximately 1560 linear feet of the tributary.

8. At various times between April 1999 and June, 2000, Respondent and/or persons acting on its behalf, discharged dredged or fill material including dirt, spoil, rock and sand, into an unnamed tributary of Charrette Creek. The unnamed tributary flows into Charrette Creek and on into the Missouri River. The discharges were part of the construction of a dam by Respondent to create the 236 acre Alpine Lake, as part of Respondent's development of a residential community. Respondent's discharges of fill during the construction of the dam, and the subsequent inundation of the tributary by Alpine Lake impacted approximately 14,292 linear feet of the tributary.

9. Respondent and/or persons acting on its behalf, used mechanized land-clearing and/or earth moving equipment to accomplish the discharges described in Paragraphs 7 and 8.

10. Respondent does not have a CWA Section 404 permit for the discharges of fill material into waters of the United States described in Paragraphs 7 and 8.

Finding of Violations

11. The dirt, spoil, rock and sand discharged by the Respondent into the tributaries of Charrette Creek constitute a "pollutant" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

12. Respondent's work in and along the tributaries of Charrette Creek, as described above, constitutes a "discharge of a pollutant" within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

13. The equipment used by Respondent in performing the work described above constitutes a "point source" as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

14. The tributaries to Charrette Creek are each a "navigable water" of the United States, as defined by CWA Section 502(7), 33 U.S.C. § 1362(7).

15. Respondent Innsbrook is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

16. Respondent's discharges of pollutants from a point source into waters of the United States were performed without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, and therefore these discharges violated Section 301 of the CWA, 33 U.S.C. § 1311.

B. CONSENT AGREEMENT

17. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

18. Respondent neither admits nor denies the factual allegations contained in this Complaint and Consent Agreement/Final Order.

19. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying this Consent Agreement.

20. Respondent and Complainant each agree to bear their own costs and attorney's fees.

21. Nothing contained in the Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state and local environmental statutes and

regulations and applicable permits.

22. Respondent consents to the issuance of the Final Order and consent to the payment of a mitigated civil penalty as set forth below.

23. Respondent agrees to make a presentation to a meeting of the St. Louis area Home Builders Association that shall describe the violations alleged in the Complaint, the terms of this settlement, and identify actions necessary to avoid similar violations in the future. The presentation shall be completed within one hundred and twenty (120) days following receipt by Respondent of a fully executed copy of this Complaint and Consent Agreement/Final Order. Respondent's presentation shall satisfy, at a minimum, the following performance standards:

- a. No later than fourteen (14) days prior to the presentation, Respondent shall provide written notice to the following persons and shall provide admission for these persons (or their designees) to attend the presentation:

Mr. Larry Long
U.S. Environmental Protection Agency - Region VII
901 N. 5th Street
Kansas City, Kansas 66101

Mr. Mark D. Frazier
U.S. Army Corps of Engineers, Kansas City District
700 Federal Building
601 E. 12th Street
ATTN: OD-R, Room 706
Kansas City, Missouri 64106

Mr. Ward Lenz
U.S. Army Corps of Engineers, St. Louis District
1222 Spruce Street
St. Louis, Missouri 63103

- b. The presentation shall include a description of what actions by Respondent triggered the requirement to obtain permits issued pursuant to Section 404 of the CWA;
- c. The presentation shall include a summary of the violations alleged in the Complaint and how Respondent's actions violated the Clean Water Act;
- d. The presentation shall include a statement that violations of the requirement to obtain

permits issued to Section 404 of the CWA may result in either administrative or judicial enforcement to obtain penalties and/or injunctive relief, and shall state the penalties and cost of mitigation required by this Consent Agreement and Final Order;

e. The presentation shall include a description of the requirements of Section 404 of the CWA (and applicable regulations) that persons obtain a permit for discharges of dredged or fill materials into navigable waters of the United States;

f. The presentation shall include a statement indicating that this project is being undertaken as part of the settlement of an EPA enforcement action;

g. The presentation shall include a statement that members of the Home Builders Association can obtain directions and guidance regarding the requirement to obtain a permit issued pursuant to Section 404 of the CWA by contacting the following persons:

Mr. Mark D. Frazier
U.S. Army Corps of Engineers, Kansas City District
700 Federal Building
601 E. 12th Street
ATTN: OD-R, Room 706
Kansas City, Missouri 64106
(816) 983-3664

Mr. Ward Lenz
U.S. Army Corps of Engineers, St. Louis District
1222 Spruce Street
St. Louis, Missouri 63103
(314) 331-8186

h. With ten (10) days of the presentation, Respondent shall provide a video tape of the presentation to Mr. Larry Long of EPA, at the address provided above.

24. Respondent hereby agrees to finance the performance of the required mitigation of the impact of the unpermitted discharges by the payment of One Hundred Twenty Thousand Dollars (\$120,000) to the Missouri Conservation Heritage Foundation Stream Stewardship Trust Fund for the purpose of restoring, preserving, and enhancing stream systems within Missouri. Respondent agrees that it would have been required to perform such mitigation if Respondent had properly applied for and obtained the required Section 404 permits, before the alleged violations had occurred. In lieu of performance of such mitigation, Respondent hereby agrees to finance performance of the mitigation by payment of \$120,000, which shall be made in full

within thirty (30) days following receipt by Respondent of a fully executed copy of this Complaint and Consent Agreement/Final Order. Failure to make the required payment shall subject Respondent to stipulated penalties as set forth in the Final Order, below. Payment of said stipulated penalty shall not relieve Respondent of the obligation to finance the required mitigation, and EPA reserves the right to enforce this requirement of the Consent Agreement and Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319. Respondent shall finance the required mitigation by issuance of certified or cashier's check made payable to "Missouri Conservation Heritage Foundation - Stream Stewardship Trust Fund" and shall deliver the check, with a transmittal letter that identifies the captioned case name and docket number to:

Missouri Conservation Heritage Foundation
c/o Stream Stewardship Trust Fund
P.O. Box 366
Jefferson City, Missouri 65102-0366

A copy of the transmittal letter and check shall be mailed to:

Howard C. Bunch
Sr. Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency - Region VII
901 N. 5th Street
Kansas City, Kansas 66101.

25. The undersigned representative(s) of Respondent certifies that he/she/they are fully authorized to enter the terms and conditions of this Complaint and Consent Agreement/Final Order and to execute and legally bind Respondent to it.

26. This Consent Agreement may be signed by EPA and Respondent in part and counterpart. This Consent Agreement and Final Order may be executed by EPA upon receipt from Respondent of a telefaxed signature page. Upon its execution, a copy of the executed agreement shall be sent by telefax and certified mail to Respondent.

27. Respondent agrees that the original Consent Agreement and Final Order signed by Respondent shall be transmitted by overnight mail to Howard C. Bunch, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region VII, 901 N. 5th St., Kansas City, Kansas 66101. Upon EPA's receipt of the signed original from Respondent, the original signature page signed by Respondent shall be filed with the previously executed copy with the Regional Hearing Clerk.

C. FINAL ORDER

IT IS HEREBY AGREED BY THE PARTIES, and pursuant to Section 309(a) and (g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a) and (g), it is ORDERED that:

1. Respondent shall pay a civil penalty of One Hundred Thousand Dollars (\$100,000). Said penalty shall be paid in full within thirty (30) days following receipt by Respondent of a fully executed copy of this Complaint and Consent Agreement/Final Order. Respondent shall pay the penalty by certified or cashier's check payable to "Treasurer, United States of America" and shall deliver it, with a transmittal that identifies the case name and docket number to:

U.S. Environmental Protection Agency - Region VII
Mellon Bank, Room 2723
Wholesale Lockbox
Box 360748
Pittsburgh, Pennsylvania 15259-0003

The check must also be annotated with the docket number and with the name of the case. Copies of the transmittal letter and the check shall be simultaneously sent to:

Howard C. Bunch
Sr. Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency - Region VII
901 N. 5th Street
Kansas City, Kansas 66101

Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

2. Respondent shall finance the required performance of mitigation, as described in Paragraph B.24 of the Consent Agreement. In the event that Respondent fails to finance the required mitigation, Respondents shall pay a stipulated penalty in the amount of Twenty Thousand Dollars (\$20,000). Such stipulated penalty shall become immediately due and payable within (10) days of Respondent's receipt of a written demand for payment from EPA. The method of payment shall be in accordance with the provisions of Paragraph C.1, above. Interest and penalty on any failure to pay a demanded stipulated penalty shall also be calculated in accordance with Paragraph C.1, above. Payment of said stipulated penalty shall not relieve Respondent of the obligation to finance the required mitigation, and EPA reserves the right to

enforce this requirement of the Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

Parties Bound

3. This Final Order shall apply to and be binding upon Respondent, its agents, successors and assigns. Respondent shall ensure that its directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for them with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

Reservation of Rights

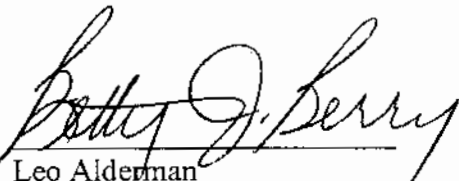
4. EPA reserves the right to enforce the terms of this Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

5. With respect to matters not addressed in this Final Order, EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and for punitive damages.

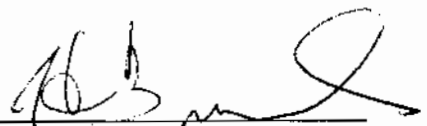
Effective Date

6. This Final Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY


pr Leo Alderman
Director
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency
Region VII

April 28, 2004

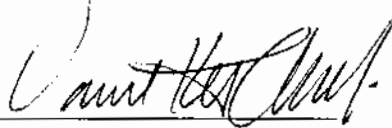

Howard C. Bunch
Sr. Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII

4/28/04

*In the Matter of Innsbrook Corporation., Docket No. CWA-07-2004-0181
Complaint and Consent Agreement/Final Order*

FOR RESPONDENT:

INNSBROOK CORPORATION:


Name Donald Kenneth Anderson Jr. Date April 23, 2004
Title: Vice President & General Counsel
Attorney for Respondent

*In the Matter of Innsbrook Corporation., Docket No. CWA-07-2004-0181
Complaint and Consent Agreement/Final Order*

IT IS SO ORDERED.

July 20, 2004
Date

Robert L. Patrick
Robert L. Patrick
Regional Judicial Officer

IN THE MATTER OF Innsbrook Corporation, Respondent
Docket No. CWA-07-2004-0181

CERTIFICATE OF SERVICE

I certify that the foregoing Complaint and, Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Howard C. Bunch
Senior Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,
Return Receipt Requested, to:

Donald Kenneth Anderson, Jr., Esq.
8011 Clayton Road, 3rd Floor
St. Louis, Missouri 66317

Dated: 7/20/04


Kathy Robinson
Regional Hearing Clerk